ABSTRACTS OF RECENT ENGLISH DECISIONS.[1]

Action at Law.—When maintainable.—By Parties clothed with Title by Foreign Law.—A woman who has become, by the laws of France, personally liable for her husband's debts, and has paid them after his death, and who is by the same laws entitled to sue a defendant in her own right to recover back the money so paid, has a *primâ facie* right to bring such action in this country without first taking out administration here. She is entitled to the like privilege, as donee by the laws of France, of her deceased husband's rights of action: *Vanquelin* vs. *Bouard*, 12 W. R. 128—C. P.

Action at Law.—In respect of Torts committed abroad.—Where by the law of a foreign country, compensation or damages may be recovered in such country for an assault there committed, an action is maintainable in England by a British subject for such assault, although proceedings taken at his instance are pending in the foreign court in respect of the same assault: *Seymour* (*Lord*) vs. *Scott*, 1 H. & C. 219; 9 Jur. N. S. 522; 32 L. J., Exch. 61; 8 L. T., N. S. 511—Exch. Cham.

Action at Law.—Pendency of another Action in respect of same Matter.—An action having been brought by an assignee under a bill of sale, his title being founded on a notice given under it, which, being objected to as invalid, a rule to enter a nonsuit was pending; afterwards he brought another action for the same goods, but founded on a title which had subsequently arisen (by reason of the bill of sale having become absolute), and, the defendant not agreeing to a *stet processus* in the former action without costs, the court allowed both actions to proceed: *Marshall* vs. *Goadby*, 11 W. R. 365—Q. B.

Banker and Banking Company.—Customers' Accounts.—Charging Interest.—A customer, being indebted to his bankers upon an account current, upon which compound interest had, according to custom, been charged, executed a mortgage to the bankers to secure the amount of the account current. He subsequently executed a creditor's deed, of which the bankers were the trustees, and from that time ceased to draw upon or pay money into the account. *Held*, that simple interest only could be charged from the date of the deed upon the balance due: *Crosskill* vs.

[1] From the Digest of English Decisions during the year 1863. The letters at the end of the paragraphs indicate the courts in which the cases were decided, and the Jurist, Law Times, Law Journal, Weekly Reporter, and other publications in which they are reported.

Bower; *Bower* vs. *Turner*, 9 Jur. N. S. 267; 32 L. J., Chanc., 540; 11 W. R. 411; 8 L. T., N. S. 135—R.

Banker's Accounts.—Mode of Keeping.—As between a banker and his customer, the mode in which the account has habitually been made out, will be viewed as evidence of an agreement that it should be taken in that way; and in the absence of any special agreement, express or implied, evidence as to the custom of bankers is receivable for the purpose of determining the principle upon which the account is to be taken: *Mosse* vs. *Salt*, 32 L. J., Chanc. 756—R.

Overdrawn Accounts.—Where a customer gets his banker to discount bills at a time when his account is largely overdrawn, and the amount is simply carried to the credit of his account, the bankers are holders for value, though no money was actually paid: *Carew*, *In re*, 31 Beav. 39.

Allowance to Customer of Income Tax on Mortgages.—Bankers cannot refuse to allow income tax to a customer upon interest accruing on a mortgage security: *Mosse* vs. *Salt*, 32 L. J., Chanc. 756—R.

Cashing Checks over the Counter.—C. presented (on behalf of his employer) a check at a banking-house. The cashier counted out the amount in notes, gold, and silver, and placed it on the counter. The plaintiff took it and counted it, and was in the act of counting it a second time, when the cashier (having discovered that the drawer's account was overdrawn) demanded the money back, and upon C.'s refusal detained him, and took it from him by force. *Held*, that the property in the notes and money had passed from the bankers to the bearer of the check, and that the payment was complete, and could not be revoked: *Chambers* vs. *Miller*, 13 C. B., N. S. 125; 9 Jur. N. S. 626; 32 L. J., C. P. 30, 11 W. R. 236; 7 L. T., N. S. 856.

Future Acquisitions.—Assignment of.—An assignment of chattel property, with a power to seize future chattels, does not operate in equity as an assignment of such future chattels, nor give the assignee a present interest in them: *Reeve* vs. *Whitmore*. *Martin* vs. *Whitmore*, 9 Jur., N. S. 1214; 33 L. J., Chanc. 63; 12 W. R. 113; 9 L. T., N. S. 311—C.

Promissory Note.—Instruments or Documents amounting to.—The following document was held to be admissible without either a promissory note or an agreement stamp. "I, J. D., have this day borrowed of J. C. £300 at £4 per hundred, payable yearly:" *Cory* vs. *Davis*, 14 C. B., N. S. 370.

So a document as follows—"On demand we jointly and severally promise to pay to Messrs. W. P. and M. or to their order, or the major part of them, £100," is a promissory note upon which the three payees may maintain an action: *Watson* vs. *Evans*, 1 H. & C. 662; 32 L. J., Exch. 137.

Acceptances, Personal Liability on.—A secretary of a benefit building society signed a promissory note in the following form:—"Midland Counties' Building Society, No. 3, Birmingham, 1st September 1856, one month after demand, we jointly and severally promise to pay J. B. £120, with interest thereon after the rate of £6 per cent. per annum (payable half-yearly), for value received. W. H., S. B., directors; W. F., Secretary." *Held*, that the secretary was personally liable on the note: *Bottomley* vs. *Fisher*, 1 H. & C. 211.

Title of Holder of unindorsed Bills when impeachable.—One who receives a bill of exchange unindorsed (though for value) acquires no better title under it than the person from whom he receives it himself has: *Whistler* vs. *Foster*, 14 C. B., N. S., 248; 32 L. J., C. P. 161; 11 W. R. 648; 8 L. T., N. S. 317.

Where, therefore, A. had fraudulently obtained a bill (or check payable to order) from B., and handed it to C., in satisfaction of a *bonâ fide* debt, but without indorsing it,—*Held*, that C. could not acquire a legal title to sue upon the instrument, by obtaining A.'s indorsement after he had received notice of the fraud: *Id.*

Bills and Notes Taken as Collateral Security.—Duty of Holder as to Presentment.—Where a defendant, being a creditor of the plaintiff, indorsed a bill, of which he was the indorsee, over to him by way of collateral security for his debt, and the plaintiff did not present it at maturity, nor give the defendant notice of its dishonor when presented,—*Held*, that the plaintiff could not recover in an action either on his original debt or upon the bill: *Peacock* vs. *Percell*, 14 C, B., N. S. 728; 32 L. J., C. P. 266; 11 W. R. 834; 8 L. T., N. S. 636.

Promissory Note.—Signing on Condition.—If A., by means of a false pretence, or a promise or condition which he does not fulfil, procures B. to give him a note or check, or an acceptance in favor of C., to whom he pays it, and who receives it *bonâ fide* for value, B. remains liable on his acceptances, and can only relieve himself from his promise to pay C. by showing that C. is not holder for value, or that he received the instrument with notice or not *bonâ fide*: *Watson* vs. *Russell*, 3 B. & S. 34, 9 Jur. N. S., 249; 31 L. J., Q. B. 304.

Destroyed or Lost Bills.—R., being indebted to the plaintiffs, gave them a bill of exchange drawn by R. and accepted by the defendant, but made payable to R.'s order. The bill was not indorsed by R., and being sent back for that purpose, was burned or destroyed by R.,—*Held*, that a suit in equity by the plaintiffs against the acceptor to recover the amount of the bill, could not be sustained: *Edge* vs. *Bumford*, 31 Beav. 247; 9 Jur. N. S. 8.

Common Carrier—Duty of Forwarding and Delivering Goods.—A railway company undertaking to carry goods from A. to B. must deliver them within a reasonable time, having reference to the means at their disposal for forwarding them; and they are not justified in delaying the delivery by adopting a particular mode of forwarding the goods, merely because that is the usual mode adopted: *Hales* vs. *The London and N. W. R. Co.*, 32 L. J., Q. B. 292, 11 W. R. 856; 8 L. T., N. S. 421.

Common Carrier—Railroad Company—Loss of Baggage or Merchandise.—By Act of Parliament and published notices, a railway company was bound to allow each passenger to take with him a certain weight of ordinary personal luggage, without any charge for the carriage. A passenger by the railway, who was stated to have had no knowledge of the Act of Parliament or the notice, brought with him as luggage a box containing only merchandise, but not exceeding in weight the limit prescribed for personal luggage. On the box was painted in large letters "Glass." No information was given by him to the company's servants, nor was any inquiry made by them, as to the contents of the box. *Held*, that inasmuch as the box contained merchandise only, and not personal luggage, there was no contract on the part of the company to carry it, and that consequently the company was not liable for the loss: *Cahill* vs. *London and N. W. R. Co.*, 13 C. B., N. S. 818; 31 L. J., C. P. 271—Exch. Cham.

Champerty, what amounts to.—A legatee, too poor to sue, assigned his legacy for less than it was worth to a person, who bought it for the purpose of enforcing payment by suit. *Held*, that this did not amount to champerty or maintenance: *Tyson* vs. *Jackson*, 30 Beav. 384.

Contract—Representations.—A representation is a statement or an assertion made by one party to the other, before or at the time of the contract of some matter or circumstance relating to it. It is not an integral part of the contract, and the contract is not broken, although the repre-

sentation proves to be untrue, unless it was made fraudulently and except in the cases of marine policies of insurance: *Behn* vs. *Burness*, 9 Jur. N. S. 620; 32 L. J., Q. B. 204; 8 L. T., N. S. 207—Exch Cham.

Whether a descriptive statement in a written instrument is a mere representation, or whether it is a substantive part of the contract, is a question of construction for the court to determine: *Id.*

A statement in a contract descriptive of the subject-matter of it, or of some material incident thereof, when intended to be a substantive part of the contract, is generally regarded as a warranty or condition on the failure or non-performance of which the other party may, provided the condition has not been partially executed in his favor, repudiate the contract *in toto*: *Id.*

Contract—Interpretation and Enforcement.—In an action on a contract where the question at issue has no relation to the manner of performing the contract, or to the consequences of non-performance, and relates entirely to the effect of the transaction at the place where it was entered into, the liability of the defendant must be determined by the *lex loci contractus*: *Scott* vs. *Pilkington*, 2 B. & S. 11.

Contract, Questions of Procedure on.—Questions of procedure are to be determined by the *lex fori*, not by the *lex loci contractus*: *MacFarlane* vs. *Norris*, 2 B. & S. 783.

Semble, that set-off is matter of procedure, and, as such, determinable by the *lex fori*: *Id.*

Contract—Impossibility of Performance.—An agreement was made to let the use of a music-hall for four specified days, for a series of concerts. Before the first day arrived the music-hall was accidentally destroyed by fire. *Held*, that the parties were discharged from the contract by the destruction of the thing agreed to be let before the time for performing the agreement: *Taylor* vs. *Caldwell*, 32 L. J., Q. B. 164; 11 W. R. 726; 8 L. T., N. S. 356.

Banker—Entries in Pass-Book.—Where an entry is alleged to have been made by mistake in the wrong place in a customer's pass-book, by the banker's clerk, but by the customer denied to be any mistake, the question is for the jury upon the evidence: *Snead* vs. *Williams*, 9 L. T., N. S. 115—Exch.

Banker—Taking Securities from Customer.—If bankers take a mortgage security from a customer for a fixed sum owing to them by the latter,

the relation of banker and customer ceases thenceforth as to that sum, and it cannot be included in the customer's banking account, so as to entitle the bankers to charge compound interest thereon; and in reference to the sum so secured, the mutual rights and obligations are thenceforth those of mortgagee and mortgagor: *Mosse* vs. *Salt*, 32 L. J., Chanc. 756—R.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF NEW YORK.[1]

Bonds issued by Railroad Companies—Compound Interest—Guaranty by a Corporation of Interest-Coupons issued by another Corporation—Jurisdiction.—Bonds issued by a railroad company, whether under its corporate seal or not, payable to A. B., or the holder thereof, are negotiable, and will pass by delivery: *The Connecticut Mutual Life Insurance Company* vs. *The Cleveland, Columbus and Cincinnati Railroad Company.*

If interest-coupons, annexed to a bond of this description, are not paid when due, interest should be allowed, by way of damages for non-payment: *Id.*

Where a corporation indorses upon an interest-warrant or coupon, issued by another company, a guaranty of payment, "for value received," it is not to be deemed an accommodation indorser or guarantor. The words "value received" import a sufficient consideration: *Id.*

An arrangement between connecting railroad companies entered into for the purpose of securing a uniform gauge of the several roads, and thus increasing the business and profits of each, forms a sufficient consideration for a guaranty by one of the corporations, of the payment of the coupons issued by another: *Id.*

Where the general railroad laws of Ohio declared that any railroad company might, by means of subscription to the capital stock of any other company, or otherwise, aid such company in the construction of its railroad for the purpose of forming a connection between said last-mentioned road and the road owned by the company furnishing such aid, and authorized any two or more railroad companies whose lines were connected, to enter into any arrangement for their common benefit: *Held*, that these provisions gave the power to companies, whose lines of road were connected,

[1] From O. L. Barbour, LL.D., Reporter; to appear in Vol. XLI. of his Reports.